

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIM.REVISION APPLICATION
NO. 138 OF 2002**

01. Raosaheb s/o Kashinath Hon
Age : 31 Yrs., Occ. : Agril.,
R/o : Chandekasare,
Tq. Kopargaon, Dist.
Ahmednagar.
02. Bhaskar Machindra Makone
Age : 32 Yrs., Occ. : Agril.,
R/o : Chandekasare,
Tq. Kopargaon, Dist.
Ahmednagar.
03. Kisan Nabaji Hon
Age : 34 Yrs., Occ. : Agril.,
R/o : Chandekasare,
Tq. Kopargaon, Dist.
Ahmednagar. [Abated
as per order dated
24/08/2016] .
04. Bhausahab s/o Gopala Hon
Age : 21 Yrs., Occ. :
Education, R/o : Chandekasare,

Tq. Kopargaon, Dist. **APPLICANTS/**
Ahmednagar. **[ORI.ACCUSED 7 TO 10]**

VERSUS

01. The State of Maharashtra

02. Sahebrao Arjun Hon

Age : 50 Yrs.,Occ. Agril.

R/o : Jagde Phata,

Chandekasare, ... **NON APPLICANT/**

Tq. Kopargaon,Dist. **[ORIGINAL**
Ahmednagar. **COMPLAINANT]**

03. Arjun Dada Hon

Age : Major, Occ. Agril.,

R/o : Jagde Phata,

Chandekasare,

Tq. Kopargaon, Dist. :
Ahmednagar.

04. Sachin Sahebrao Hon

Age : Major, Occ. Agril.,

R/o : Jagde Phata,

Chandekasare,

Tq. Kopargaon, Dist. :
Ahmednagar.

05. Madhukar Sahebrao Hon

Age : Major, Occ. Agril.,

R/o : Jagde Phata,

Chandekasare,

Tq. Kopargaon, Dist. :
Ahmednagar. **NON APPLICANTS**

.....

Mr. R.N.Dhorde, Senior Advocate i/b

Mr. V.R.Dhorde, Advocate for Applicants.

Mr. G.O.Wattamwar, A.P.P. for R – 1 – State.

Mr. R.R.Mantri, Advocate for R – 2.

Mr. K.C.Sant, Advocate for R – 3 to 5.

.....

CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 19th DECEMBER, 2016

.....

ORAL JUDGMENT :

01. Heard Mr. R.N.Dhorde, learned Senior

Advocate assisted by Mr. V.R.Dhorde, Advocate for the Applicants, Mr. G.O.Wattamwar, learned A.P.P. for the non-applicant No. 1 – State, Mr. R.R.Mantri, learned Advocate for non-applicant No. 2 and Mr. K.C.Sant, learned Advocate for non-applicant Nos. 3 to 5.

02. The applicants/accused have filed this Revision Application challenging the Judgment passed by the Sessions Court dismissing the Appeal filed by the applicants and maintaining the Judgment passed by the learned Magistrate convicting the applicants [accused Nos. 7,8,9 and 10] for the offences punishable u/ss 326,324,447 read with Section 34 of the Indian Penal Code.

Mr. R.N.Dhorde, learned Senior Advocate has stated that during the pendency of this Revision Application, the applicant No. 3 [accused No. 9] has expired.

03. The learned Senior Advocate for the applicants has made elaborate submissions and has

taken me through the record to point out omissions, contradictions and discrepancies in the statements and evidence of the witnesses, especially of Dr. Shinde [P.W.11] and Dr. Kshirsagar [P.W.12] to urge that the case of the prosecution is false and unreliable and it can not be said that the prosecution has been able to establish the guilt of the applicants beyond doubt. However, after examining the record, going through the evidence and the Judgment passed by the Sessions Court as well as the Judgment passed by the learned Magistrate, I find that the sub-ordinate Courts have elaborately delved into all the relevant aspects, have examined the evidence in the right perspective and it can not be said that the appreciation of evidence on record suffers from any illegality or perversity, which necessitates the re-appreciation of it by this Court.

04. The learned Senior Advocate for the applicants then submitted that the conviction of the applicants for the offence punishable u/s 326 of the Indian Penal Code is unsustainable, as the evidence

on record is not sufficient to establish that the victims Sachin and Sahebrao suffered grievous injuries. In support of this submission, the learned Senior Advocate has referred to the evidence of victim Sachin, who has admitted that he had not gone to the Corporation hospital and had not taken any treatment from Dr.Shinde, though Dr. Shinde [P.W.11] has deposed that he has treated victim Sachin, found that he suffered grievous injury and then referred him to the specialist-Dr. Kshirsagar. However, the evidence of Dr. Kshirsagar [P.W.12] proves beyond doubt that victim Sachin suffered fractures on both fore-arms at lower ends with contusions and Dr.Kshirsagar has explained how it falls in the category of grievous injury. I see no reason to disbelieve the evidence of Dr. Kshirsagar. Apart from this, the evidence on record proves beyond doubt that victim Sahebrao also suffered grievous injury i.e. incised wound over the left side of neck, 2 cm. X 1 cm. muscle deep. Though a submission is made by the learned Senior Advocate that the evidence of Dr. Shinde or Dr. Kshirsagar does not show that the above injury suffered by Sahebrao

can be classified as grievous injury, considering the nature of injury, it can not be said that the conclusions of the sub-ordinate Courts on this point are unsustainable. I see no reason to interfere in the findings recorded by the sub-ordinate Courts convicting the applicants for the offence punishable u/s 326 of the Indian Penal Code, the findings being based on proper appreciation of evidence on record.

05. At this stage, the learned Senior Advocate for the applicants submitted that except for the incident in question, the applicants had not been involved in any other crime/offence at any point of time. It is submitted that the applicants are released on bail pursuant to the order passed by this Court on 05/08/2003 and though the applicants and the complainants/victims are residing in the same village, there has been no complaint by the victims against the applicants. It is prayed by the applicants that considering these facts lenient view be taken and the sentence may be reduced for the period for which the applicants had been in Jail.

06. Mr. R.R.Mantri, learned Advocate for non-applicant No. 2 has submitted that though there is nothing on record to show that the applicants have mis-used the liberty after being released on bail by this Court, the facts on record show that the conduct of the applicants in prosecuting the matter before this Court had not been proper and, therefore, they are not entitled for any leniency. It is submitted that this Court had passed order that if office objections are not removed within stipulated time, the Revision Application shall stand dismissed without reference to the Court, those office objections were not removed and the Revision Application was treated as dismissed, however, the applicants filed Criminal Application No. 1549 of 2003 in Criminal Application No. 934 of 2002 in Criminal Revision Application No. 138 of 2002 and succeeded in getting the Revision Application restored by making incorrect statements that office objections were removed though factually the office objections were not removed. It is submitted that the applicants deliberately avoided to implead the non-applicant Nos. 2 to 5 [complainants]

as party to the Revision Application. In support of his submissions, learned Advocate for non-applicant No. 2 relied on the Judgment given in the case of **Raj Bala Vs. State of Haryana & Ors. Reported in 2016 (1) SCC 463.** In my view the submissions made by the Advocate for the non-applicant No. 2 are not relevant for considering whether lenient view is required to be taken while considering the issue of sentence.

Though Mr. R.R.Mantri, and Mr. K.C.Sant, Advocates for the non-applicant Nos. 2 to 5/complainants and Mr.G.O.Wattamwar, learned A.P.P. for the State of Maharashtra have opposed the alternate submission made on behalf of the applicants, it is required to be accepted.

Hence, the following order :

(i) The Judgment passed by the learned Magistrate and maintained by the learned Additional Sessions Judge convicting the applicants for the offences punishable u/ss 326,324 and 447 read with 34 of the Indian Penal Code is maintained and the

order directing payment of fine is also maintained.

However, the order directing the applicants to undergo rigorous imprisonment for 3 years for the offence punishable u/s 326 read with section 34 of the Indian Penal Code, to undergo rigorous imprisonment for 1 year for the offence punishable u/s 324 read with section 34 of the Indian Penal Code is modified and it is directed that the applicants [accused No. 7 Raosaheb s/o Kashinath Hon, accused No.8 Bhaskar Machindra Makone and accused No.10 Bhausahab s/o Gopala Hon] are sentenced to undergo rigorous imprisonment for the period for which they had been in Jail.

(ii) In addition, the applicants [accused No. 7 Raosaheb s/o Kashinath Hon, accused No.8 Bhaskar Machindra Makone and accused No.10 Bhausahab s/o Gopala Hon] are directed to pay ₹ 20,000/- each towards compensation as per Section 357-A of the Indian Penal Code. This amount shall be deposited before the Court of the Judicial Magistrate First Class, Kopergaon within 2 months from today. If the

amount is not deposited by the applicants within time, the learned Magistrate shall take steps to recover the amount from the applicants, if necessary by resorting to coercive steps.

On deposit of the amount of compensation, ₹ 5,000/- shall be given to the victim Sahebrao Arjun Hon and ₹ 5,000/- shall be given to the victim Sachin Sahebrao Hon.

The balance amount of ₹ 50,000/- shall be deposited with the State.

The Criminal Revision Application is partly allowed in the above terms.

[Z.A.HAQ, J.]